

PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference F 7728	FOR FURTHER ACTION See Form PCT/PEA/416	
International application No. PCT/EP2004/007610	International filing date (day/month/year) 09.07.2004	Priority date (day/month/year) 08.08.2003
International Patent Classification (IPC) or national classification and IPC A23C9/13, A23J3/16		
Applicant UNILEVER N.V. et al		
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> sent to the applicant and to the International Bureau) a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>		
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>		
Date of submission of the demand 09.12.2004	Date of completion of this report 01.08.2005	
Name and mailing address of the international preliminary examining authority:  European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016	Authorized Officer Koch, J Telephone No. +31 70 340- 	

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/EP2004/007610

Box No. 1 Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

Description, Pages

1-12 as originally filed

Claims, Numbers

1-14 as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):
- * If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/EP2004/007610

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	4,8,9,12-14
	No: Claims	1-3,5-7,10,11
Inventive step (IS)	Yes: Claims	
	No: Claims	1-14
Industrial applicability (IA)	Yes: Claims	1-14
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

**INTERNATIONAL PRELIMINARY
REPORT ON PATENTABILITY
(SEPARATE SHEET)**

International application No.

PCT/EP2004/007610

Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial
applicability; citations and explanations supporting such statement**

1. Reference is made to the following documents:

- D1: DATABASE WPI Section Ch, Week 198425 Derwent Publications Ltd.,
London, GB; Class D13, AN 1984-155386 XP002260893 & JP 59 082050 A
(FUJI OIL CO LTD) 11 May 1984 (1984-05-11)
- D2: WO 03/055324 A (RAISIO BENECOL OY ;WESTER INGMAR (FI);
KUUSISTO PAEIVI (FI)) 10 July 2003 (2003-07-10)
- D3: DATABASE WPI Section Ch, Week 199408 Derwent Publications Ltd.,
London, GB; Class D13, AN 1994-063488 XP002260894 & SU 1 789 172 A
(LENGD REFRIG IND TECHN INST) 23 January 1993 (1993-01-23)

2. The present application does not meet the criteria of Article 33(1) PCT, because
the subject-matter of claims 1-3, 5-7, 10 and 11 is not new in the sense of Article
33(2) PCT.

2.1. D1 discloses (cf. abstract) a lactic acid fermented soybean protein based pudding
comprising e.g. 8% partially (6-20%) hydrolysed soybean protein and e.g. 40%
cheese whey, which contains about 1% milk proteins as is known to the skilled
person. The milk protein content in the pudding thus amounts to e.g. 0,4%.
The fermented product further contains e.g. 2% of oil / fat (i.e. 1/4 times the
amount of soybean protein).

The subject-matter of claims 1-3, 5-7 and 10 is therefore not new in the sense of
Article 33(2) PCT.

2.2. D2 discloses (cf. claims 1, 4, 16-18; examples 5 & 10) the preparation of a yogurt
by lactic acid fermentation of a starting material comprising 0,002 to 20 g / 100 g
(e.g. 3 g / 150 g) soy protein hydrolysate with normal yogurt cultures. More than
40% relative to the total amount of soy protein present in the starting material is
hydrolysed soy protein.

The subject-matter of claim 11 is therefore not new in the sense of Article 33(2)
PCT.

2.3. D3 discloses (cf. abstract) the preparation of a lactic acid fermented milk using a starting material that comprises mainly milk and further 2-3% soy protein hydrolysate. More than 40% relative to the total amount of soy protein present in the starting material is hydrolysed soy protein.

The subject-matter of claim 11 is therefore not new in the sense of Article 33(2) PCT.

3. Dependent claims 4, 8, 9 and 12-14 do not appear to contain any additional features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT with respect to inventive step, the reasons being as follows:

Claim 4 can not be considered as involving an inventive step, because D2 (cf. ex. 10) discloses the use of "normal" cultures for fermentation, and it is known to the skilled practitioner that *Streptococcus thermophilus* and *Lactobacillus bulgaricus* are the standard strains for making yogurt.

The values mentioned in claims 8 & 9 refer to properties, which are common to yogurt prepared by standard methods.

The use of a starting material comprising both hydrolysed and non-hydrolysed soy protein for preparing a lactic acid fermented food product is known from D1.